

Order

Michigan Supreme Court
Lansing, Michigan

October 31, 2008

Clifford W. Taylor,
Chief Justice

121995 (20)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

In re:

The Honorable GERARD TRUDEL,
Judge, 24th District Court

SC: 121995
JTC: Formal Complaint No. 68

By order of August 1, 2008, the petitioner was directed to produce evidence supporting the allegation in its motion that the respondent had failed to appear for a creditor's examination pursuant to a subpoena issued by this Court. On order of the Court, the answer having been received, the motion for appointment of receiver is again considered, and it is DENIED, because the Court is not persuaded that it should grant the requested relief. The petitioner seeks the appointment of a receiver in its ongoing collection efforts against respondent former judge. Since the petitioner acknowledges that a creditor's examination has not been scheduled, it has not shown that all less intrusive means were ineffective. *Reed v Reed*, 265 Mich App 131, 162 (2005). Our cases note that the appointment of a receiver is a "harsh proceeding, which should only be resorted to in extreme cases." *People v Israelite House of David*, 246 Mich 606, 618 (1929); *Michigan Minerals, Inc v Williams*, 306 Mich 515, 525 (1943). The appointment of a receiver at this juncture would be premature.

WEAVER, J. (*concurring.*)

I concur in the order denying the motion for appointment of a receiver for the reasons stated in my concurrence to this Court's September 22, 2006, order denying the Judicial Tenure Commission's first motion for appointment of a receiver:

I write separately to note that my basis for denial of petitioner's motion is that there is no constitutional authority to assess costs against a judge. Subsection 2 of Const 1963, art 6, § 30 provides that "the supreme court may censure, suspend with or without salary, retire or remove a judge" As I stated in my concurrence in *In re Noecker*, 472 Mich 1, 18-19 (2005), "Nothing in this constitutional provision gives this Court any authority to discipline the judge by assessing the judge the costs of the

Judicial Tenure Commission proceedings against him or her.” [*In re Trudel*, 477 Mich 1202, 1203 (2006).]

And as I later stated in my dissent from a November 2, 2007, order by a majority of the Court granting a default judgment against the garnishee defendant, California Charley’s Corporation, the apparent sole shareholder of which being Judge Gerard Trudel:

While under Const 1963, art 6, § 30(2) the Supreme Court also has the authority to “make rules implementing this section [concerning the Judicial Tenure Commission],” the Supreme Court *cannot* create Judicial Tenure Commission rules that authorize the Judicial Tenure Commission to recommend to the Supreme Court something that the Supreme Court does not have constitutional authority to do. The rule-making authority available to the Supreme Court is limited to making rules “implementing this section.” And, because “this section” provides that “the supreme court may censure, suspend with or without salary, retire or remove a judge,” this Court only has the authority to make rules implementing the section in connection with the *censure, suspension with or without salary, or retirement or removal of a judge*. Assessment and collection of costs is not included in this authority to discipline a judge. As the Supreme Court does not have authority to assess and collect costs granted to it by the Michigan Constitution, there is no corresponding rule-making authority to provide for the Judicial Tenure Commission to recommend to the Supreme Court the assessment and collection of costs against a respondent judge. This Court may not delegate authority that it lacks in the first place. [*In re Trudel*, 480 Mich 1213, 1214 (2007) (citation omitted; emphasis in original).]



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 31, 2008

Corbin R. Davis

Clerk